

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA :
 :
 v. : CRIMINAL ACTION
 : NO. 1:10-CR-156-WBH-ECS
 :
 JAMES J. GUINN :

REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE

Upon consideration of Defendant's motion for severance of counts, [Doc. 20], the undersigned **RECOMMENDS** that the motion be **DENIED**. The first superseding information charges Defendant with four counts of failure to file income tax returns for the calendar years 2003, 2004, 2005 and 2006 in violation of Title 26, United States Code, Section 7203. [Doc. 4]. The counts are clearly properly joined under Rule 8 as the offenses are of the same or similar character.¹ As for severance under Rule 14,² Defendant has

¹ Rule 8 of the Federal Rules of Criminal Procedure provides in part as follows:

(a) Joinder of Offenses. The indictment or information may charge a defendant in separate counts with 2 or more offenses if the offenses charged--whether felonies or misdemeanors or both--are of the same or similar character, or are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan.

² Rule 14 provides in part as follows:

(a) Relief. If the joinder of offenses or defendants

not alleged sufficient facts or circumstances to show actual compelling prejudice, as required for severance under that rule. See United States v. Cassano, 132 F.3d 646, 651 (11th Cir. 1998)(citing United States v. Schlei, 122 F.3d 944, 984 (11th Cir. 1997)). In essence, Defendant argues prejudicial spillover, which is insufficient absent particularized facts indicating that the jury would be unable to follow appropriate limiting instructions. See United States v. Walser, 3 F.3d 380, 386-87 (11th Cir. 1993); see also United States v. Wasson, 568 F.2d 1214, 1222 (5th Cir. 1978).

Accordingly, the undersigned **RECOMMENDS** that the motion for severance, [Doc. 20], be **DENIED**.

SO REPORTED and RECOMMENDED, this 10th day of June, 2010.

/s/ E. Clayton Scofield III
E. Clayton Scofield III
UNITED STATES MAGISTRATE JUDGE

in an indictment, an information, or a consolidation for trial appears to prejudice a defendant or the government, the court may order separate trials of counts, sever the defendants' trials, or provide any other relief that justice requires.